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|-------------------------------|--------------------------|---------------------|
| <b>Notice of Allowability</b> | <b>Application No.</b>   | <b>Applicant(s)</b> |
|                               | 09/783,354               | DANIEL ET AL.       |
|                               | Examiner<br>Cheryl Juska | Art Unit<br>1771    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Amendment filed 07/12/04.
2.  The allowed claim(s) is/are 1-4,10-19,21,22,27,30,40-45,74 and 82-85.
3.  The drawings filed on 02/14/01 & 07/12/04 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 08/04
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

Cheryl Juska  
Primary Examiner  
Art Unit: 1771

**DETAILED ACTION**

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Kris Doyle on September 27, 2004.
3. The application has been amended as follows:

**Please cancel non-elected claims 79-81 and 87-92.**

*Response to Amendment*

4. Applicant's amendment filed June 12, 2004, has been entered. Claims 1, 10-15, 18, 19, 22, 30, 74, and 82-85 are amended. Claims 5-9, 20, 23-26, 28, 29, 31-39, 46-73, 75-78, 86, and 93-95 are cancelled, while claims 40-45, 79-81, and 87-92 are withdrawn. With the above Examiner's Amendment and the rejoining of claims 40-45, the pending claims are 1-4, 10-19, 21, 22, 27, 30, 40-45, 74, and 82-85.
5. Said amendment is sufficient to overcome the 112, 1<sup>st</sup> and 2<sup>nd</sup> rejections set forth in sections 12-16, 18, and 19 of the Supplemental Office Action mailed June 21, 2004. Specifically, claim 1 has been amended to state that the tiles are assembled adjacent and abutting

to each other on a flooring surface so that the tile exhibit orthogonal ambiguity without pattern alignment. This overcomes the 112, 2<sup>nd</sup> set forth in section 12. Additionally, the 112, 1<sup>st</sup> scope of enablement and 2<sup>nd</sup> rejection according to *Ex parte Slob*, set forth in sections 14 and 19, are withdrawn due to the inclusion in claim 1 of the design features that produce said orthogonal ambiguity. The 112 rejections set forth in sections 13, 15, 16, and 18 are rendered moot due to the cancellation of said claims.

6. The amendment to claim 82 is sufficient to overcome the prior art rejection of claims 82-85 as set forth in section 21 of the Supplemental Office Action. Specifically, claim 82 is now limited to carpet tiles exhibiting orthogonal ambiguity without alignment of shapes between adjacent tiles. Since Eusemann clearly teaches alignment of shapes between adjacent tiles, said rejection is hereby withdrawn. Similarly, the rejection of claim 74 over the Eusemann patent set forth in section 26 is hereby withdrawn due to the amendment to said claim, which is now dependent upon claim 1. Additionally, the prior art rejections set forth in sections 22, 24, and 25 are rendered moot due to the cancellation of the claims thereto.

7. The drawings submitted July 12, 2004, have been entered and are sufficient to overcome the drawing objection set forth in section 9 of the Supplemental Office Action. Additionally, the Petition for Color Drawings under 37 CFR 1.84(a)(2), filed May 13, 2003, has been entered in the application and the required fee has been paid.

8. Thus, all standing objections and rejections have been overcome. An updated search of the prior art has produced no new art of record for which to base a rejection upon. Therefore, claims 1-4, 10-19, 21, 22, 27, 30, 74, and 82-85 are in condition for allowance. For the record, it is noted that the claimed design features are not merely ornamental, but rather relate to the

function of the substrate. The design pattern of shapes and colors as recited in the claims is critical to the function of the carpet tiles as orthogonally ambiguous. In other words, the claimed design enables the tiles to be laid randomly in an installation without the need to align the pattern or nap of the tiles with respect to each other. Therefore, the design features are given patentable weight and said claims are allowed.

9. As noted above, claims 40-45 are rejoined according to MPEP 821.04 due to said claims being dependent upon the allowed product claims. Thus, claims 40-45 are also allowed.

10. The above Examiner's Amendment is made to cancel non-elected claims which do not contain allowable subject matter. Hence, the application is in condition for allowance.

### ***Conclusion***

11. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIVATE EXAMINER